

TITLE 329 SOLID WASTE MANAGEMENT BOARD

#05-219(SWMB)

SUMMARY/RESPONSE TO COMMENTS FROM THE THIRD COMMENT PERIOD

The Indiana Department of Environmental Management (IDEM) requested public comment from May 1, 2006, through May 22, 2006, on IDEM's proposed rule language. IDEM received comments from the following party:

Barnes and Thornburg, on behalf of Heritage Environmental Services LLC (BT)

Following is a summary of the comments received and IDEM's responses thereto.

Comment: Requiring the commissioner's approval for disposal of PCB remediation waste from a source having greater than 50 ppm, or for disposal of PCB remediation waste at non-municipal waste landfills not meeting the requirements of 329 IAC 10-17, or in a nonmunicipal solid waste landfill, provides little, if any, environmental benefit. 40 CFR, Subpart D provides sufficient environmental protection, and requiring written approval by the commissioner adds requirements that are more stringent the federal requirements, thereby placing companies like Heritage at a competitive disadvantage. IDEM states in its response to comments that it has revised the rule in response to Heritage's comments. However, the revised language does not appear to reflect the change that IDEM indicated it was making in its response. Heritage therefore incorporates its prior comments into these comments. (BT)

Response: IDEM responded to comments received from BT during the second comment period in the proposed rule which was printed in the May 1, 2006, Indiana Register at 29 IR 2639. As indicated in the previous response to comments, IDEM agrees that the existing language of 329 IAC 4.1-13-1 on PCB waste landfill disposal sets out a review process that can be redundant in its practical applications. IDEM has proposed language, and has continued to refine this language with the intent of streamlining this process, where possible, in order to minimize any economic disadvantage. However, IDEM still believes that a specific review of these PCB disposal activities is necessary to ensure adequate protection of human health and the environment. IDEM believes that each landfill is a unique site, and must be reviewed on its own merits to determine its protectiveness.

Comment: BT believes that if the PCB waste to be disposed of contains less than 50 ppm PCBs, it should not make a difference what the source's concentration of PCBs was. BT points out that 40 CFR 761, Subpart D does not make a distinction between remediation waste from sources greater or less than 50 ppm PCBs. Under 40 CFR 761, Subpart D, EPA allows disposal of PCB remediation waste containing less than 50 ppm at facilities permitted, licensed, or registered by a state to manage municipal solid waste subject to 40 CFR 258, or to manage non-municipal, non-hazardous waste subject to 40 CFR 257.7 through 257.30. If PCB waste is not

tested as required, it is assumed to contain greater than 50 ppm PCBs and must be disposed of at either a RCRA Subtitle C or a chemical waste landfill. (BT)

Response: The commenter provided references to a specific area within the Federal regulations, 40 CFR 761.61. IDEM understands the potential misunderstanding of the applicability of this section, and would like to point out that the application of this section is specific to waste defined as “PCB remediation waste.” This definition is found within 40 CFR 761.3, and specifically references wastes in which the source concentration for PCBs is/was equal to or greater than 50ppm. Furthermore, this section also requires the generator to submit to IDEM and the EPA a written plan for site cleanup and disposal prior to conducting such activities. The disposal site review is conducted during this review. The approval, if the plan is deemed acceptable, would not only include a site approval for the facility, but paperwork that the generators present to the landfill indicating the site is acceptable for disposal of the PCB waste. Specific testing requirements for PCB remediation waste are also indicated within 40 CFR 761.61. The commenter referenced these test methods as applying to waste that was less than 50ppm as well as those having a concentration equal to or greater than 50ppm. Although it would make sense that these methods are to be used to determine if the waste is regulated under this part, there is no specific statement within this part which requires the use of the test methods to make that determination.

Comment: BT states that the revised language in 329 IAC 4.1-13-3 is not clear as to what requirements apply. They believe that IDEM intended that remediation wastes managed pursuant to 40 CFR 761.61 are not subject to 329 IAC 4.1-13-3. If that is IDEM’s intent, then the current wording of that section needs to be revised to clearly state IDEM’s intention. BT recommends 329 IAC 4.1-13-3(b) be revised to read: “(b) ~~As follows~~, If the requirements of section 1 of this rule do not include a requirement for approval by the U.S. EPA Regional Administrator before disposal of a specific waste, then:.....”(BT)

Response: It was not IDEM’s intention that remediation wastes managed pursuant to 40 CFR 761.61 are not subject to 329 IAC 4.1-13-3. IDEM has revised the language in 329 IAC 4.1-13-3 to clarify the requirements. 329 IAC 4.1-13-3 does not only apply to a particular category of PCB waste.

Comment: IDEM has failed to explain the purpose of 329 IAC 4.1-13-4. IDEM’s response to comments indicates that 329 IAC 4.1-13-4 is required by 329 IAC 10-9-5. BT cannot see how the two sections are related. 329 IAC 10-9-5 only addresses nonmunicipal solid waste landfills. On the other hand, 329 IAC 4.1-13-4 only address a certification that the source of PCB in the waste was less than 50 ppm. BT questions that if 329 IAC 4.1-13-4 is needed for section 329 IAC 10-9-5, then why does it apply to MSWLF’s as well as nonmunicipal solid waste landfills. Moreover, 329 IAC 4.1-13-4 poses a difficulty for remediation waste because

remediation waste must be under 50 ppm, on an as found basis, and there is no requirement to determine the concentration of the source of PCBs in the remediation waste. 329 IAC 4.1-13-4 does not enhance environmental protection, and therefore should be deleted. (BT)

Response: The commenter's concerns about the elimination for consideration for PCB disposal because of the specific regulatory name given to the landfill due to the types of waste that would generally be received by the landfill is understood by IDEM. In this case, the previous potential inability to receive PCB waste at a non-municipal solid waste landfill (non-MSWLF) was the concern. IDEM has attempted to address this issue in the suggested rule language change by allowing PCB waste to be disposed at a non-MSWLF type facility, provided the facility is designed to the same criteria as the current regulations required of a municipal solid waste landfill, and the has obtained approval from the commissioner in accordance with 329 IAC 10-9-5(a) & (b). 329 IAC 4.1-13-3 requires non-MSWLFs to only accept waste designated within the facility permit or wastes in which the commissioner has granted specific written approval. IDEM has also amended the requirements of the existing {329 IAC 4.1-13-1(d)} and proposed {329 IAC 4.1-13-4} to include the non-MSWLF landfills that are constructed in accordance with the current MSWLF requirements, and have obtained approval in accordance with 329 IAC 10-9-5, as approved disposal locations for less than 50 ppm PCB waste. This type of waste previously could only be disposed at MSWLFs designed to current regulatory standards, or at a MSWLF not designed to current regulatory standards with specific approval from the commissioner. This change would allow a facility such as the Heritage Landfill (Opp. No. 67-04) to receive this type of waste after either a permit modification has been approved or a specific written approval by the commissioner of IDEM